

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>S.MORANTZ,INC.</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>HANG&amp;SHINEULTRASONICS,INC.,</b>	:	
	:	
<b>Defendant.</b>	:	
	:	
	:	<b>NO.99-2640</b>

<b>Reed,S.J.</b>	<b>December 20, 1999</b>
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**MEMORANDUM**

Defendant Hang & Shine Ultrasonics, Inc., has filed a motion to dismiss this trademark infringement action for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and for improper venue pursuant to Fed. R. Civ. P. 12(b)(3). Upon consideration of defendant's motion (Document No. 5), plaintiff's response (Document No. 19), and the pleadings and affidavits submitted therewith, defendant's motion will be granted and the case will be transferred to the United States District Court for the Western District of New York.

**I. BACKGROUND**

Plaintiff S. Morantz, Inc. ("Morantz"), is a Pennsylvania corporation that manufactures and sells Ultrasonic cleaning machines. The Ultrasonic machines use sound waves and cleaning agents to remove dirt and residue from household items such as window blinds. Morantz's only place of business is in Philadelphia, within the Eastern District of Pennsylvania, though it apparently makes sales nationwide. In 1991, Morantz sold one of its machines to defendant Hang & Shine Ultrasonics, Inc. ("Hang & Shine"), a New York corporation with its principal

place of business in Alden, New York, within the Western District of New York. Hang & Shine is in the business of cleaning window blinds, and it maintains a presence on the World Wide Web and a toll-free, 1-800 number.

Morantz alleges that Hang & Shine infringed upon Morantz's registered trademark by using, on its website and elsewhere, a logo depicting a woman scrubbing blind so over a tub of water.<sup>1</sup> Morantz has asserted claims under the Lanham Act, 15 U.S.C. § 1114 and 15 U.S.C. § 1125, under Pennsylvania statute, 54 Pa.C.S.A. § 1124 and 73 Pa.Stat. § 201-2, *et seq.*, and at common law.

Hang & Shine has moved to dismiss the present action on the grounds that jurisdiction is lacking and venue is improper. Hang & Shine claims that its contacts with Pennsylvania are minimal and that "the substantial part of the events or omissions giving rise to the claim occurred" outside the Eastern District of Pennsylvania. Morantz counters that Hang & Shine's contacts with Pennsylvania through its website and toll-free number were substantial and that Morantz's choice of forum should be respected.

## II. ANALYSIS

Because Pennsylvania's long-arm statute permits the exercise of *in personam* jurisdiction to the fullest extent allowed under the U.S. Constitution, we look to federal law in deciding questions of personal jurisdiction. See 42 Pa.C.S.A. § 5332; see also Harbuck v. Aramco, Inc. \_\_\_, No. 99-1971, 1999 U.S. Dist. LEXIS 16892 (E.D. Pa. Oct. 21, 1999).

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<sup>1</sup>The woman depicted on the corporate material of Hang & Shine is affectionately referred to as "Sister Mary Agony" by those who work for Hang & Shine. (Declaration of James Ieraci, at ¶ 13 (filed Oct. 21, 1999)). Morantz offers no such moniker, conventional or otherwise, for its logo.

Once defendant has raised a jurisdictional issue, the plaintiff bears the burden of establishing with reasonable particularity sufficient contacts to support jurisdiction. See Provident National Bank v. California Federal Savings & Loan Ass'n, 819 F.2d 434, 437 (3d Cir. 1987). Plaintiff may establish either specific jurisdiction, when the cause of action arises out of the defendant's contacts with the forum, or general jurisdiction, when the plaintiff's claim does not arise out of defendant's contacts with the forum, but defendant's contacts with the forum are "continuous and systematic." See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416, 104 S.Ct. 1868, 1873 (1984). Both parties agree that Hang & Shine's contacts with Pennsylvania were not "continuous and systematic" in a manner sufficient to establish general jurisdiction, and therefore my analysis will focus on specific jurisdiction.

Plaintiff must satisfy a three-part test to establish specific jurisdiction. Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.Supp. 1119, 1123-24 (E.D. Pa. 1997). "First, the plaintiff must show that defendant has constitutionally sufficient 'minimum contacts' with the forum," Imo Industries, Inc. v. Keirker AG, 155 F.3d 254, 260 (3d Cir. 1998); that is, defendant must have purposefully availed itself of jurisdiction through contacts that were more than merely "random," "fortuitous," or "attenuated." See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183 (1985). Second, plaintiff's claims must arise out of those contacts. See Zippo, 952 F.Supp. at 1122-23. Third, the court must determine that the exercise of jurisdiction would be reasonable; in other words, the exercise of jurisdiction must comport with "traditional notions of fair play and substantial justice." See International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 343 (1940)).

Plaintiff's argument on the first and most critical element rests almost exclusively on Hang & Shine's website. The exponential growth of the Internet, the arrival of the World Wide Web as a business medium, and the jurisdiction-confounding nature of cyberspace have spawned new strains of jurisdictional analysis. <sup>2</sup>A few common themes have emerged in courts' approaches to personal jurisdiction and minimum contacts on the information superhighway.

First, a mere presence on the World Wide Web does not establish the minimum contacts necessary to subject a corporation to personal jurisdiction on a worldwide basis. See Harbuck v. Aramco, No. 99-1971, 1999 U.S. Dist. LEXIS 16892, at \*21 ("[T]he website amounts to 'passive' advertising at best; and subjecting ADAMSto this court's jurisdiction because of the website would be unreasonable."); Molnlycke Health Care AB v. Dumex Medical Surgical Products Ltd., No. 99-1725, 1999 U.S. Dist. LEXIS 13678, at \*9 (E.D. Pa. Sept. 8, 1999) ("[T]he establishment of a website through which customers can order products does not, on its own, suffice to establish general jurisdiction."); Hurley v. Cancun Playa Oasis Int'l Hotels, No. 99-574, 1999 U.S. Dist. LEXIS 13716, at \*9 (E.D. Pa. Aug. 31, 1999) (a hotel's Internet presence alone did not subject it to personal jurisdiction in Pennsylvania); Zippo, 952 F. Supp. at 1124 ("A passive website that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction."); Edberg v. Neogen Corporation, 17 F. Supp. 2d 104, 115 (D. Conn. 1998) ("[T]he minimum contacts requirements of the Due Process Clause are not met by virtue of defendant's maintenance of a Website on the Internet."); Cybersell, Inc. v. Cybersell, Inc., FL, 130 F.3d 414, 418 (9<sup>th</sup> Cir. 1997) ("[S]o far as we are

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<sup>2</sup>For a more comprehensive discussion of the nature of the Internet, see ACLU v. Reno, 31 F. Supp. 2d 473, 481-84 (E.D. Pa. 1999).

aware, no court has ever held that an Internet advertisement alone is sufficient to subject the advertiser to jurisdiction in the plaintiff's home state...."); but see Inset Systems, Inc. v. Instruction Set, Inc., 937 F.Supp. 161 (D.Conn.1996) (maintaining a website and telephone number is sufficient to establish personal jurisdiction in every state); Heroes, Inc. v. Heroes Foundation, 958 F.Supp. 1 (D.D.C.1996) (website that explicitly solicited donations and provided toll-free numbers subject to jurisdiction).<sup>3</sup>

Second, the minimum contacts analysis in cases involving the Internet is conducted on a "sliding scale," on which the constitutionality of the exercise of personal jurisdiction is directly proportional to the level of commercial interactivity on a corporation's website. See Zippo, 952 F.Supp. at 1124. At one end of the continuum are passive sites that merely post information that is available to anyone with access to the Internet; on the other end are highly interactive sites through which a corporation conducts business over the Internet. See id. The latter sites typically involve a high volume of deliberate exchanges of information through the site, including the formation of contracts. See id. In the middle are "interactive Websites where a user can exchange information with the host computer." Id. The exercise of personal jurisdiction in cases involving sites in this middle category hinges on the level of commercial information exchange that takes place on the website. See id.

Third, a website targeted at a particular jurisdiction is likely to give rise to personal jurisdiction. See Molnlycke Health Care, 1999 U.S. Dist. LEXIS 13678, at \*11 ("Plaintiff has

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<sup>3</sup>The latter two cases represent the minority view of personal jurisdiction with respect to the Internet, and, despite their relative recency, might be considered ancient in light of the meteoric growth of the Internet and the rapid progress of jurisprudence in this area of the law. See Harbuck, 1999 U.S. Dist. LEXIS 16892, at \*21. Both cases have been heavily criticized in numerous jurisdictions.

madenoshowingthatdefendant’swebsitestargetedPennsylvania.”).<sup>4</sup>Whilethepostingofa generalizedadvertisementontheInternetisinsufficienttosubjecttheadvertiser tojurisdictionin theplaintiff’s homestate,minimumcontactsmaybefoundwhenthereis“‘somethingmore’ to indicatethatthedefendantpurposefully(albeitelectronically)directedhisactivityinasubstantial waytotheforumstate.” Cybersell,130F.3dat418.

Fourth,theCourtwillconsiderthequalityandquantityofcontactswiththeplaintiff’s jurisdictiontowhichtheInternetsitehasgivenriseindeterminingwhetherpersonaljurisdiction maybeexercised. See Maritzv.Cybergold,Inc.,947F.Supp.1328,1333(E.D.Mo.1996).For instance,in Zippo,952F.Supp.at1126,the courtbaseditsexciseofpersonaljurisdictionin partonthefactthatthedefendantinthatcasehadcontractedwith3,000peopleinplaintiff’s jurisdictionthroughitswebsite,andin Heroes,958F.Supp.1,the courtgaveweighttothe numberof“hits”toawebsitebyresidentsinthe forumstate.

Turningtothefactsofthiscase,Irejectattheoutsetplaintiff’s suggestionthatHang& Shine’s maintenanceofatoll-freenumberandawebsitethatisaccessibletoindividualswithin thestateofPennsylvaniaconstitutessufficientminimumcontactstosubjectHang&Shineto personaljurisdictioninthisdistrict.Thecaselawisclearonthispoint;theremustbe “somethingmore”thanamerewebsitetojustifytheexerciseofpersonaljurisdictionoveranon- residentcorporation. See GraphicControlsCorp.v.UtahMedicalProducts \_\_\_,No.96-0459E(F), 1997U.S. Dist.LEXIS7448,at\*10(W.D.N.Y.May21,1997)(corporation’snationwidetoll- freetelephonenumberandinformationalwebsitedidnotdemonstratepurposefulavailmentand

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<sup>4</sup>This element flows out of the “purposeful availment” requirement set forth by the Supreme Court in Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228 (1958).

thus personal jurisdiction was not found).

In search of “something more,” It turns to Hang & Shine’s website. On the sliding scale of interactivity discussed above, defendant’s website is at best a middle category site. <sup>5</sup>Clearly, it is not a highly interactive site through which business is conducted. Contracts and sales are not consummated through the website, and the volume of information exchanged via the site is small. There are a few minimally interactive features on the site, including a lease application that may be printed out, but not sent over the Internet; a form through which a user may order and pay for a \$10 promotional video; a form through which a user may request additional information; and a link by which a user may send e-mail directly to Hang & Shine from the site. (Plaintiff’s Memorandum of Law Opposing Defendant’s Motion to Dismiss or Transfer, Exhibit 13).

Upon a careful review of the record and the case law on this subject, I conclude that these website features are not interactive enough to justify the exercise of personal jurisdiction by this Court. The presence of a e-mail link or a form for placing orders on a website does not create the kind of minimum contacts required to establish personal jurisdiction. See Desktop Technologies, Inc. v. Colorworks Reproduction & Design, Inc., No. 98-5029, 1999 U.S. Dist.

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<sup>5</sup>Courts have held that websites with similar levels of interactivity fall in the “passive” category. See Blackburn v. Walker Oriental Rug Galleries, Inc., 999 F. Supp. 636, 639 (E.D. Pa. 1998) (“The e-mail link alone is not enough to establish jurisdiction and plaintiff has not demonstrated that the nature and quality of the commercial activity was sufficient to classify the defendant’s Web Site as anything more than passive.”); Grutowski, 1998 U.S. Dist. LEXIS 20255, at \*14 (“The e-mail links which permit readers to send questions to SLO are the only interactive elements of these pages, and these links... are insufficient to make these pages more than advertisements.”).

LEXIS 1934, at \*15 (E.D. Pa. Feb. 24, 1999).<sup>6</sup>

In Desktop Technologies, a Pennsylvania corporation filed suit against a Canadian corporation for trademark infringement, and asserted jurisdiction on the basis of the Canadian corporation's website. Like the site in the present case, the website in Desktop Technologies contained an e-mail link and order form (which, like Hang & Shine's lease application, could not be completed online) and instructions for submitting orders. The court in Desktop Technologies held that such features did not subject the defendant corporation to personal jurisdiction in Pennsylvania. In Grutowski v. Steamboat Lake Guides & Outfitters, Inc., No. 98-1453, 1998 U.S. Dist. LEXIS 20255 (E.D. Pa. Dec. 21, 1998), the court considered a website that included an information request form through which a customer could submit her name, address, telephone number, fax number, e-mail address, and comments online. The court concluded that the website's information exchanging capabilities did not give rise to jurisdiction. See also

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<sup>6</sup>Plaintiffs seem to argue that a customer's ability to order a promotional video over the website places Hang & Shine's website in a category different from the sites discussed above. I find this argument unpersuasive. The sale of a promotional video tape over the Internet does not increase the interactivity of the website or transform it into a site through which Hang & Shine does its business. Like the website itself, the video tape merely provides information about Hang & Shine's products. It is not a product in and of itself; it is merely another medium through which Hang & Shine advertises. Thus, the fact that the website provides customers with the opportunity to obtain other forms of advertising online does not increase its interactivity for the purpose of considering the exercise of personal jurisdiction. Cf. Desktop Technologies, 1999 U.S. Dist. LEXIS 1934, at 15 ("While visitors to the website are able to exchange information over the website via Internet FTP and e-mail, receiving a file through the Internet FTP or e-mail does not constitute placing an order. Thus, while Defendant is exchanging information over the Internet, it is not doing business over the Internet with residents of Pennsylvania.").

Moreover, the website in Molnlycke Health Care provided any visitor to the site an opportunity to order *product* directly from the site by providing a credit card number and completing an on-line order form, yet the court found that general jurisdiction could not be exercised over the foreign corporation. 1999 U.S. Dist. LEXIS 13678, at \*7, 15. The website in this case merely offers an opportunity to purchase additional advertising materials, not products, and thus is far less interactive from a business standpoint.



Cybersell, 130 F.3d at 419; Edberg v. Neogen Corp., 17 F.Supp.2d 104 (D.Conn.1998) (web site through which users can learn about products, order product information through online catalog, e-mail corporate representatives, and order products through a toll-free telephone number does not subject Michigan corporation to jurisdiction in Connecticut).<sup>7</sup>

Third, Hang & Shine's website is not targeted at Pennsylvania. Plaintiff has not produced any evidence to show that Hang & Shine actively sought out business in Pennsylvania through its website or any other means. Defendant offers the affidavit of the president of Hang & Shine, Marc Miller, in which Miller declares that "neither the phone number nor the website is directed to Pennsylvania residents," and that Hang & Shine "does not advertise in any publications or media that specifically target Pennsylvania, and... does not advertise on the television or radio in Pennsylvania." (Declaration in Support of Ultrasonics' Motion to Dismiss, at ¶¶ 5, 6). The record in this case evinces nothing to support a claim that Hang & Shine aimed its web advertising at the Commonwealth.

Finally, there is no indication that Hang & Shine's Internet site gave rise to any significant level of contact with users in Pennsylvania. Plaintiff points to the following Hang & Shine contacts with Pennsylvania: the sale of one Ultrasonic cleaning machine to a Pennsylvania

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<sup>7</sup>Cases in which personal jurisdiction has been exercised on the basis of a website have involved substantially higher levels of interactivity than the site at issue in this case. In Zippo, 952 F.Supp. at 1121, the website offered an Internet news service, which was transmitted over the Internet on a regular basis, and collected information and payment from and contracted with "subscribers" in the plaintiff's jurisdiction, all via the Internet. The site in Maritz, Inc. v. Cybergold, Inc., 947 F.Supp. 1328 (E.D. Mo. 1996), collected the e-mail addresses of all visitors to its website for the purpose of developing a mailing list by means of which it would widely distribute information on its products. The site in this case involves far less interactivity. Furthermore, in Zippo and Maritz, the courts found other substantial contacts with the forum jurisdiction that are not present in this case.

corporation in 1998 (Declaration of Lisa Morantz, at ¶26); the sale of four videos to Pennsylvania residents within the last two years, two in response to e-mail requests; and five e-mail contacts by Pennsylvania residents. (Letter from Kevin D. McCarthy, Counsel for Hang & Shine, to Alan H. Bernstein, Counsel for Morantz, Sept. 13, 1999, Exhibit A to Declaration of William J. Castillo). <sup>8</sup>One machine, four videos and five e-mails do not demonstrate the kind of contacts contemplated in Zippo, where defendant had consummated 3,000 contracts with residents of Pennsylvania over the Internet, and others such cases. Hang & Shine is not registered to do business in Pennsylvania, does not maintain bank accounts or a place of business here, and does not advertise or employ as a sales representative here. (Declaration in Support of Ultrasonics' Motion to Dismiss, at ¶3, 4, 6). Its contacts appear to be the kind of "fortuitous," "random," and "attenuated" contacts that the Supreme Court has held insufficient to warrant the exercise of jurisdiction. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183 (1985). Thus, I also conclude that defendant's contacts with Pennsylvania, over the Internet and otherwise, are not substantial enough to justify the exercise of jurisdiction by this Court.

The toll-free number does not expose Hang & Shine to jurisdiction, either. Many courts have declined to exercise jurisdiction where a foreign corporation maintained a toll-free number and a website. See Shapiro v. Santa Fe Gaming Corporation, No. 97-6117, 1998 U.S. Dist. LEXIS 2488, at \*6 (N.D. Ill. Feb. 27, 1998) ("[I]t is well settled that the operation of a toll-free telephone number and passive, non-advertising website, without more, is insufficient to satisfy jurisdiction or venue.") (citations omitted); see also Hurley, 1999 U.S. Dist. LEXIS 13716;

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<sup>8</sup>There is no indication in the record that any of these e-mails originated from Hang & Shine's website.

Edberg, 17F.Supp.2d104, Graphic Controls \_\_\_, 1997 U.S. Dist. LEXIS 7448. In Maritz, the court characterized a toll-free number as far less significant for the purpose of establishing jurisdiction than a website, observing that “an 800 number provides a less rapid and more limited means of information exchange than a computer with information downloading and printing capabilities.” 947F.Supp.at 1332-33. Having determined that Hang & Shine’s website does not constitute sufficient minimum contacts with Pennsylvania, I conclude also that its maintenance of a toll-free telephone number does not constitute sufficient contacts.

Plaintiff’s failure to prove the first element of the specific jurisdiction test by showing that Hang & Shine had sufficient minimum contacts with Pennsylvania is fatal to its effort to establish personal jurisdiction. If plaintiff had satisfied the first element, it may have been able to establish the second element, that its claim arises out of the alleged contacts, because defendant’s website contained the logo at issue in the trademark dispute. However, plaintiff would not prevail on the third element, because this Court’s exercise of jurisdiction over Hang & Shine would violate traditional notions of fair play and substantial justice. “If jurisdiction were [to] be based upon a defendant’s mere presence on the Internet, this would lead to a defendant’s being subjected to jurisdiction on a worldwide basis, and would viscerate the personal jurisdiction requirements as they currently exist.” Edberg, 17F.Supp.2d at 115 (citing McDonough v. Fallon McElligott, Inc. \_\_\_, No. 95-4037, 1996 U.S. Dist. LEXIS 15139 (S.D. Cal. 1996).

Therefore, defendant’s motion to dismiss for lack of jurisdiction pursuant to Fed.R. Civ. P. 12(b)(2) will be granted. Furthermore, because this Court does not have personal jurisdiction over defendant Hang & Shine, venue is also improper here, and I will grant defendant’s motion

under Fed.R.Civ.P.12(b)(3).

### **III. CONCLUSION**

Plaintiff has failed to carry its burden of proving that Hang & Shine had sufficient “minimum contacts” with Pennsylvania to warrant the exercise of personal jurisdiction in a manner consistent with the Due Process Clause of the Fourteenth Amendment. The construction of the information superhighway does not warrant a departure from the well-worn path of traditional personal jurisdiction analysis trod by the Supreme Court and innumerable other federal courts, which lead to the exercise of personal jurisdiction only when a foreign corporation has had sufficient minimum contacts with the forum state. I conclude today that a website alone does not make minimum contacts.

If a district court finds that jurisdiction is lacking, it shall, “if it is in the interest of justice, transfer such action or appeal to any other court in which the action could have been brought at the time it was filed or noticed.” 28 U.S.C. § 1631. Defendant Hang & Shine acknowledges that the “events giving rise to Morantz’s current cause of action occurred substantially in New York,” and because the Western District of New York would have both subject matter and personal jurisdiction over this case, the case will be transferred there. See Grutowski, 1998 U.S. Dist. LEXIS 20255, at \*20.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>S.MORANTZ,INC.</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>HANG&amp;SHINE ULTRASONICS,INC.</b>	:	
	:	
<b>Defendant.</b>	:	<b>NO.99-2640</b>

**ORDER**

**AND NOW**, this 20th day of December, 1999, upon consideration of the motion of defendant Hang & Shine Ultrasonics, Inc. (Document No. 5), to dismiss the complaint for lack of personal jurisdiction and improper venue pursuant to Fed. R. Civ. P. 12(b)(2) and (b)(3), and plaintiff's response (Document No. 19), and having thoroughly reviewed the pleadings and affidavit submitted therewith, it is hereby **ORDERED** that defendant's motion is hereby **GRANTED**.

It is further **ORDERED** that this action is hereby **TRANSFERRED** pursuant to 28 U.S.C. § 1631 to the United States District Court for the Western District of New York, and that the Clerk of this Court shall forthwith cause the file and record to be delivered to the Clerk of the United States District Court for the Western District of New York.

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**LOWELLA REED, JR., S.J.**